IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.907 OF 2006

M/s.S.N.Pushkarna ...Petitioner

vs.

M/s.Sandvik Asia Ltd. & Anr. ...Respondents

Mr.A.R.Pandey i/b Mr.R.P.Ojha for the Petitioner
Mr.P.D.Desai i/b Mr.V.V.Vashi for Respondent No.1
Mr.Rajesh More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 12,2006.

P.C.:

1. Rule. Learned Advocate for first Respondent waives service. Learned A.P.P. waives service for second Respondent. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Petitioner is arraigned as an accused in a complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The order issuing process was challenged by the Petitioner by filing a Revision Application before the Sessions Court. By order dated 13th September 2005 passed in Miscellaneous Application No.817 of 2005 delay in preferring the Revision Application was condoned. In view of the order passed by this Court, the Revision Application was ordered to be heard on merits. The Petitioner had filed Criminal Application No.585 of 2005 in this Court for quashing the complaint. By order dated 15th July 2005, this Court disposed of the said application by permitting the Petitioner to avail of the remedy of filing a Revision Application before the Sessions Court. It is this

order of this Court which is referred to in order dated 13th September 2005.

3. By the impugned order dated 20th February 2006 the Revision Application filed by the Petitioner has been disposed of by passing the following order :

. "It is seen that Revision Application is barred by limitation. The Accused Applicant is not attending the Trial Court and he is making Application for exemption as told by Shri J.V.Vashi, learned Advocate for the Respondent/Complainant. It is also informed that case is for recording of evidence and filing Affidavit on record and it is very old case of 1996. I, therefore, do reject bail Application and direct the Accused/applicant to appear before Trial Court on 14th March 2006 with the direction to the Trial Court to proceed further for disposal of the case according to law. Revision Application is dismissed and accordingly disposed of."

4. The learned Advocate for the first Respondent submitted that the revision was not maintainable considering the stage of the trial. On plain reading of the impugned order, it is clear that there is non-application of mind on the part of the learned Additional Sessions Judge. He has recorded a finding that the Revision Application is barred by limitation. The said finding is contrary to the order dated 13th September 2005 passed by his learned Predecessor. The order impugned is very cryptic and deserves to be set aside on the narrow ground

indicated above. The Revision Application will have to be remanded to the Sessions Court. It will be obviously open for the first Respondent to raise all permissible contentions to oppose the Revision Application.

5. Hence, I pass the following order :

i) Impugned Judgment and Order dated 20th February 2006 is quashed and set aside. Revision Application No.1100 of 2005 is restored to file of the Sessions Court.

ii) Parties are directed to appear before the learned Sessions Judge on 3rd October 2006 at 11.00 a.m. The learned Sessions Judge will either hear the Revision Application himself or will assign the same to any other Judge as per his administrative convenience. The Revision Application shall be heard and decided on merits in accordance with law as expeditiously as possible and in any event on or before 31st January 2007.

iii) All contentions of both the parties on merits of the Revision Application are expressly kept open.

iv) Rule is made partly absolute in above terms.

v) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE